

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

<b>In re</b>  <b>MARY E. STEUART,</b>  <div style="text-align: right;"><b>Debtor</b></div> <hr style="border: 0.5px solid black;"/> <b>MARY E. STEUART,</b>  <div style="text-align: right;"><b>Plaintiff</b></div> <b>v.</b>  <b>EDUCATIONAL CREDIT MANAGEMENT CORPORATION,</b>  <div style="text-align: right;"><b>Defendant</b></div>	<b>Chapter 7 Case No. 03-17676-RS</b>       <b>Adversary Proceeding No. 03-1392</b>
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**MEMORANDUM OF DECISION AND ORDER  
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT  
AND ON MOTION TO AUTHENTICATE OBJECTED-TO EXHIBITS**

Before the Court are discrete motions for summary judgment filed in an adversary proceeding in the within Chapter 7 case. In the adversary proceeding, the Debtor/Plaintiff seeks a discharge of her student loans on an undue hardship basis under § 523(a)(8) of the Bankruptcy Code. The Defendant Educational Credit Management Corporation is the assignee of these loans and contests their discharge.

Both parties contend that, on the uncontroverted facts before the Court, they are entitled to judgment as a matter of law and that there is no genuine issue of material fact, citing the appropriate and governing rules and decisions. FED. R. CIV. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Kelly v. United States*, 924 F.2d 355 (1<sup>st</sup> Cir. 1991). The Debtor marshals her facts to meet the requirements formulated and applied in this District for the determination of undue hardship. *In re Savage*, 311 B.R. 835 (1<sup>st</sup> Cir. BAP 2004); *In re Kelly*, 312 B.R. 200 (1<sup>st</sup> Cir. BAP 2004). The Defendant advances on a somewhat different front, arguing that undue

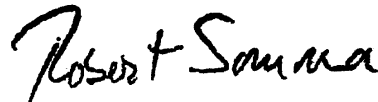
hardship cannot abide where, as here, no current demand for payment is being made. Each portrays their position as pristine: free from controversy in fact and free from uncertainty in law. Each supports their position with the requisite memoranda, affidavits, and designations. See *Affidavit in Support of Plaintiff* and *Affidavit of Angela Houff*.

On March 23, 2005, the Court held a hearing on the summary judgment requests. Upon reflection and consideration of the materials filed by the parties, the record of the proceedings to date, and the representations and arguments of counsel at the hearing, the Court discerns numerous factual controversies including, by example, the exact amount of the loans currently due, the financial circumstances of the Debtor now and in the foreseeable future, her prospects for employment, and the financial consequences of her participation in the Defendant's deferred payment program. In such circumstances, the Court concludes that the matter should be determined by trial, not by summary judgment.

### **ORDER**

For the reasons set forth above, the Court hereby **denies** the Defendant's Motion for Summary Judgment and the Debtor's Cross-Motion for Summary Judgment. The Court also **denies** the Debtor's Motion to Leave to Authenticate Objected To Exhibits, without prejudice to the Debtor's right to move for their admission at trial and fully reserving the Defendant's right to object to such admission. **The trial in this adversary proceeding shall be held on Thursday, August 11, 2005, commencing at 10:00 a.m.**

Dated: July 19, 2005



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Robert Somma  
United States Bankruptcy Judge

cc: Laurel E. Bretta, Esq.  
John F. White, Esq.